Claims

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Overview

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Statutory Authority

- Contract Disputes Act of 1978, as amended (41 U.S.C.601-613) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act.
  - Applies to any express or implied contract covered by the Federal Acquisition Regulation.
  - Does not apply to any contract with
    - A foreign government or agency of that government, or
    - An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

Statutory Authority (Cont'd)

- The Act provides for:
  - (a) The payment of interest on contractor claims;
  - (b) Certification of contractor claims; and
  - (c) A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

Applicable Regulations

- FAR Part 2.101 -- Definitions
- FAR Subpart 33.2 – Disputes and Appeals
- DFARS Subpart 233.2 – Disputes and Appeals
- AFFARS 5333.2 – Disputes and Appeals
- AFARS 5133.2 – Disputes and Appeals

CO's Authority

33.210 -- Contracting Officers Authority

- Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and 33.214, contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to --
  - (a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or
  - (b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

Is this really a claim?

"Claim" means a ***written*** demand or ***written*** assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum ***certain***, the adjustment or interpretation of contract terms, or other relief ***arising under or relating to the contract***. However, a written demand or written assertion by the contractor seeking ***the payment of money exceeding $100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act***. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The ***submission may be converted to a claim, by written notice to the converting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time***.

Is this really a claim?

- Claims generally arise from “Issues in Controversy,”
  - disagreement(s) between the Government and the contractor about some material aspect of the contract such as the contractor’s obligation to perform, quality of supplies/services provided, price of supplies/services provided, alleged additional tasks levied on the contractor, etc.

Non-contract Claims

Several statutes exist, which provide for relief for parties
damaged by the United States. Unless the claim is
pursuant to a change in the requirements of a contract,
which effects the contractor's rights or costs of providing
the goods or services, the matter doesn't fall under the
cognizance of the contracting officer.

Non-contract Claims

- Personnel Claims Act (31 USC 3721)
  - Applies Worldwide
  - Loss, damage, destruction of personal property of military personnel and DoD civilians that occurs incident to service

Non-contract Claims

- Military Claims Act (10 USC 2733)
  - Administrative remedy for loss of property, personal injury or death caused by a civilian employee or a member of the armed services
  - Addresses injuries not covered by Federal Tort Claims Act (28 USC 2671-2680)
  - Generally limited to no more than $100K

Non-contract Claims

- Foreign Claims Act (10 USC 2734)
  - Applies in limited circumstances overseas
  - Allows for payment of claims by inhabitants of foreign countries for personal injury, death or property loss/damage caused by negligent or wrongful act or omission of US military personnel outside the US
  - Not applicable in countries with which the US has entered into a Status of Forces Agreement (SOFA) or other stationing agreement that provides for claims processing

Non-contract Claims

- SOFA Claims
  - SOFAs may contain specific terms for claims processing and may even address claims arising under or related to contracts
  - Consult legal for claims provisions of the local SOFA (ROK SOFA)

Non-contract Claims

- Solatia Payments
  - Based on widespread eastern custom
  - Nominal payment to victims of accidents
  - No legal obligation
  - Directly impacts relations with host nation

Non-contract Claims

- UCMJ Article 139 Claims (10 USC 939)
  - Authorizes collection of damages directly from a military member's pay
  - Willful damage/wrongful taking of property by military personnel acting outside the scope of their employment
  - If occurrence is overseas, investigation and adjudication should be completed while unit is deployed

Non-contract Claims

- Combat Claims (10 USC 939)
  - Arise in low intensity conflict/Major Theater War environment where US has deployed forces at the invitation of the host nation.
  - Generally not addressed in international agreements between US and host nation or military assistance agreements
  - General rule – damage resulting directly from combat activities not compensable

Non-contract Claims

- Requisitions under the International Law of War
  - Requisition of any type of property to satisfy a valid military necessity
  - Payment generally accomplished under Foreign Claims Act or Military Claims Act
  - Receipts to be given to civilians for requisitioned items will facilitate claims processing

Policy

The Government's policy is to ***try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level***. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. ***Agencies are encouraged to Use ADR procedures to the maximum extent practicable***. Certain factors, however, may make the use of ADR inappropriate (see 5 U.S.C. 572(b)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), (5 U.S.C. 571, *et seq.*), agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

Policy (cont'd)

"Alternative dispute resolution (ADR)" means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, mini trials, arbitration and use of ombudsmen.

Initiation of Claim

- Shall be submitted, in writing to the contracting officer for a decision within 6 years after ***accrual*** of a claim, unless the contracting parties agreed to a shorter time period.
- Shall provide the certification below when submitting any claim exceeding $100,000.
  - "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor."
  - The above certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

Initiation of Claim (cont'd)

- Continue performance pursuant to FAR 52.233-1 for claims arising under the contract or relating to the contract
  - A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233-1 Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233-1.
  - A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233-1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

Initiation of Claim (cont'd)

- Abide by the clause at 52.233-4 -- Applicability of US law pertaining to resolution of the claim or breach of contract
- Abide by the clause at DFARS 252.233-7001 – Choice of Law Overseas

CO's Decision

33.211 -- Contracting Officers Decision

- When a claim by/against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall --
  - (1) Review the facts pertinent to the claim;
  - (2) Secure assistance from legal and other advisors;
  - (3) Coordinate with the contract administration office or contracting office, as appropriate; and
  - (4) Prepare a written decision that shall include a --
    - (i) Description of the claim or dispute;
    - (ii) Reference to the pertinent contract terms;
    - (iii) Statement of the factual areas of agreement and disagreement;
    - (iv) Statement of the CO's decision, with supporting rationale;

CO's Decision (cont'd)

- (v) Paragraph substantially as follows:
  - This is the final decision of the Contracting Officer
  - You may appeal this decision to the agency board of contract appeals within 90 days from the date you receive this decision
  - You must mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the CO
    - Proceed under the board's small claim procedure for claims of $50,000 or less or its accelerated procedure for claims of $100,000 or less.
  - You may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C.603, regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

CO's Decision (cont'd)

- (vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

- (b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or ***by any other method that provides evidence of receipt.*** This requirement shall apply to decisions on claims initiated by or against the contractor.

CO's Decision (cont'd)

- c) The contracting officer shall issue the decision within the following statutory time limitations:
  - (1) For claims of $100,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.
  - (2) For claims over $100,000, 60 days after receiving a certified claim; *provided, however,* that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

CO's Decision (cont'd)

- (e) The contracting officer shall have no obligation to render a final decision on any claim exceeding $100,000 which contains a defective certification, if ***within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.***
- h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

CO's Decision (cont'd)

- The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.